- offending conduct, recently broken his contract with UAL in favor of a contract and possible partnership with UAL's direct competitor, Defendant WAL BRANDING AND MARKETING, LLC, d/b/a WORLD ARMWRESTLING LEAGUE aka WAL UNDERGROUND ("WAL").
- 3. Defendant corporation, recognizing the growing popularity of Mr. Larrett, created and publicized (or caused to be created and publicized) an altered version of the Plaintiff's Copyrighted "Devon Larrett Double Bicep" for use on Mr. Larrett's appearance on ESPN's original show SportsNation. A clip containing the altered image then appeared on WAL's Facebook page for purposes of publication, advertisement, and marketing.
- 4. Defendant's conduct caused harm to Plaintiff and, as such, Plaintiff must be compensated for Defendant's willful acts of infringement.

#### **JURISDICTION AND VENUE**

- 5. This is a civil action seeking damages for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101, et seq.
- 6. This Court has subject matter jurisdiction over this copyright infringement action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
- 7. This Court has personal jurisdiction over Defendant because, among other things,
  Defendant is doing business in the State of California and in this judicial district, the acts
  of infringement complained of herein occurred both on a national broadcast viewable in
  the State of California and placed on a public website viewable in the State of California,
  and Defendant has caused injury to Plaintiff and their intellectual property within the State
  of California and in this judicial district.
- 8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (c).

#### THE PARTIES

9. Plaintiff is an organizer and promoter of the sport of arm wrestling. Plaintiff is the author of the photograph entitled "*Devon Larrett Double Bicep*" and a legal and/or beneficial owner of a copyright interest in and to that photograph. Plaintiff is a limited liability

- company organized and existing under the laws of the State of California, with its principal place of business in Fountain Valley, California.
- 10. Defendant is also an organizer and promoter of the sport of arm wrestling. Defendant is a limited liability company organized and existing under the laws of the State of Illinois, with its principal place of business in Chicago, Illinois.
- 11. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as Does 1 through 10, are unknown to Plaintiff, who therefore sues Defendants by such fictitious names (the "Doe Defendants"). Plaintiff will seek leave of Court to amend this Complaint to state their true names and capacities when they have been ascertained. Plaintiff is informed and believes and on that basis avers that the Does Defendants are liable to Plaintiff as a result of their participation in all or some of the acts hereinafter set forth. WAL and the Doe Defendants are referred to collectively herein as "Defendants."
- 12. Plaintiff is informed and believes and on that basis avers that at all times mentioned in this Complaint, each of the Defendants was the agent and/or alter ego of each of the other Defendants and, in doing the things alleged in this Complaint, was acting within the course and scope of such agency.

#### **GENERAL AVERMENTS**

- 13. Plaintiff is the author of the photograph "Devon Larrett Double Bicep." Plaintiff owns the rights and title to the copyright in the photograph "Devon Larrett Double Bicep" (the "Infringed Work").
- 14. Plaintiff filed an application for copyright registration with the United States Copyright
  Office for the photograph "Devon Larrett Double Bicep" on February 1, 2016, and
  received a Certificate of Registration on February 23, 2016, (Registration Number: VA 1988-410) with an effective date of Registration of February 1, 2016. A true and correct
  copy of Plaintiff's application for copyright registration, Certificate of Registration, and

- the photograph in questions "Devon Larrett Double Bicep" are annexed hereto as Exhibit A.
- 15. "Devon Larrett Double Bicep" is a work made for hire, shot by photographer Pete Henze while both he and Mr. Larrett were under contract with UAL. Mr. Larrett was flown in specifically for the photo shoot at UAL's expense.
- 16. "Devon Larrett Double Bicep" was first published on UAL's Facebook page as a promotional photograph on August 27, 2013 and was later published on UAL's office website www.TheUAL.com. A true and correct copy of a screenshot of UAL's Facebook page indicating and evidencing the original publication date of "Devon Larrett Double Bicep" is annexed hereto as Exhibit B.
- 17. On October 7, 2015, an altered-though-substantially-similar version of "Devon Larrett Double Bicep" was broadcast on ESPN's original show SportsNation. A true and correct copy of a screenshot of that television broadcast indicating and evidencing ESPN's broadcast of an altered version of "Devon Larrett Double Bicep" is annexed hereto as Exhibit C.
- 18. On October 29, 2015, it came to Plaintiff's attention that on October 9, 2016, Defendant and/or their agents reproduced, distributed, and/or published (and/or caused to be reproduced, distributed, and/or published) an altered-though-substantially-similar version of "Devon Larrett Double Bicep" via a clip of ESPN's original show SportsNation containing the altered version of "Devon Larrett Double Bicep" by posting said clip onto a Facebook page managed by Defendant WAL ("Infringing Post"). A true and correct copy of a screenshot of WAL's Facebook page indicating and evidencing the publication date of said clip is annexed hereto as Exhibit D.
- Defendant did not have any license, authorization, permission, or consent to use the Infringed Work.
- 20. In fact, on November 11, 2015, Plaintiff provided written notice to Defendant WAL that the Infringing Post constitutes infringement of Plaintiff's rights and demanded that

Defendant immediately cease and desist from any further use of the Infringed Work.

Plaintiff is entitled redress for Defendant's willful, intentional and purposeful use and exploitation of the Infringed Work for their own financial benefit with full knowledge that such use constituted infringement of, and was in disregard of, Plaintiff's rights.

### **COUNT I**

### **COPYRIGHT INFRINGEMENT**

### (17 U.S.C. §§ 106 and 501)

(By Plaintiff Against Defendants)

- 21. Plaintiff incorporates herein by this reference each and every averment contained in paragraphs 1 through 20, inclusive.
- 22. Through their conduct averred herein, Defendants have infringed Plaintiff's copyright in the Infringed Work in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.
- 23. Defendant's acts of infringement are willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.
- 24. As a direct and proximate result of said infringement by Defendants, Plaintiff is entitled to damages in an amount to be proven at trial.
- 25. Plaintiff is also entitled to Defendant's profits attributable to the infringement, pursuant to 17 U.S.C. § 504(b) and (c), including an accounting of and a constructive trust with respect to such profits.
- 26. Plaintiff further is entitled to their attorney's fees and full costs pursuant to 17 U.S.C. § 505 and otherwise according to law.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, jointly and severally, as follows:

- 1. For damages in such amount as may be found, or as otherwise permitted by law.
- 2. For an accounting of, and the imposition of constructive trust with respect to, Defendants' profits attributable to their infringements of Plaintiff's copyright in the Infringed Work.

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3. For prejudgment interest according to law. 4. For Plaintiff's attorneys' fees, costs, and disbursements in this action. 5. For such other and further relief as the Court may deem just and proper. DANIEL L. HITZKE ALEXANDER C. EISNER HITZKE & ASSOCIATES, INC. Daniel L. Hitzke Alexander C. Eisner Attorneys for Plaintiff 

1		
2	<u>DEMAND</u>	FOR JURY TRIAL
3	Plaintiff demands a trial by jury.	
4		
5	Date: April 6, 2016	DANIEL L. HITZKE ALEXANDER C. EISNER
6		HITZKE & ASSOCIATES, INC.
7	a a a a a a a a a	$max_0$
8		By: Cay Com
9		Daniel L. Hitzke Alexander C. Eisner
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28	COMPLAINT FOR C	7 COPYRIGHT INFRINGEMENT
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## **EXHIBIT A**

# Case 2:16-cv-02353 Document 1 Filed 04/06/16 Page 9 of 18 Page ID #:9 Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Registration Number
VA 1-988-410
Effective Date of Peristrat

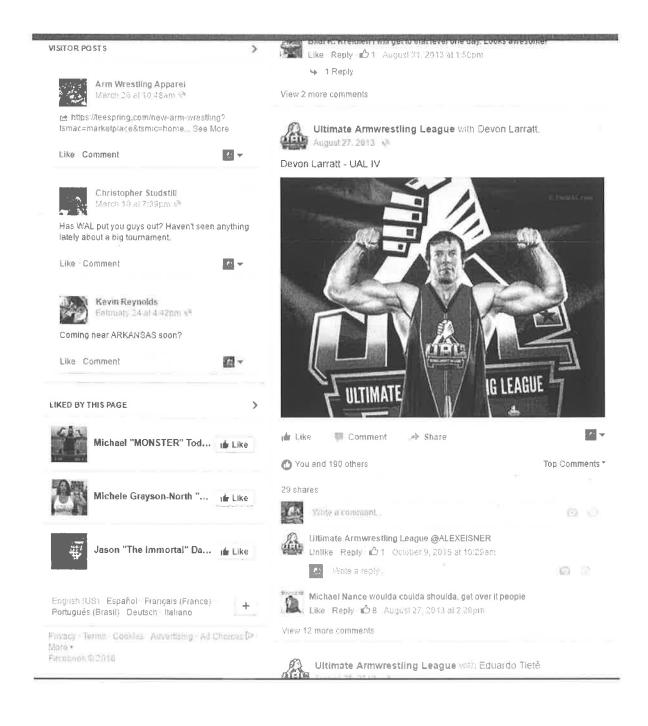
Effective Date of Registration: February 01, 2016

United States Register of Copyrights and Director

Title		
Title of Work:	Devon Larratt Double Bicep	
Completion/Publication		
Year of Completion: Date of 1st Publication: Nation of 1st Publication:	2013 August 27, 2013 United States	
Author		
<ul> <li>Author Created:</li> <li>Work made for hire:</li> <li>Citizen of:</li> <li>Domiciled in:</li> </ul>	photograph Yes United States	
Copyright Claimant		
Copyright Claimant:	The Ultimate Armwrestling League 8900 Warner Ave., Fountain Valley, CA, 92708, United States	
Rights and Permissions		
Organization Name: Address:	• •	
Certification		
Name: Date:		



## **EXHIBIT B**



## **EXHIBIT C**



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## **EXHIBIT D**

Fred Dedrick November 10 at 9 55am 👫

Rob Proz overall Left and Right hand winner at illinois WAL State Championship

Like Comment

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Arm Fighter Foto November 9 at 11 24am 🐶

TO #WALSTRONG WAL Illinois

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Arm Fighter Foto November 9 at 11 23am v<sup>a</sup>

**™** #WALSTRONG WAL Illinois

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Marcellus Wiley vs. Devon. You'll want to see what happens. SportsNation #WALonESPN #WALstrong



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126 shares



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Harala mara mahahaa fram ana ad tha bisenad assents in non condition



Robert Redway Wiley talking out his ass as usual Like Reply - October 9 at 2,08pm

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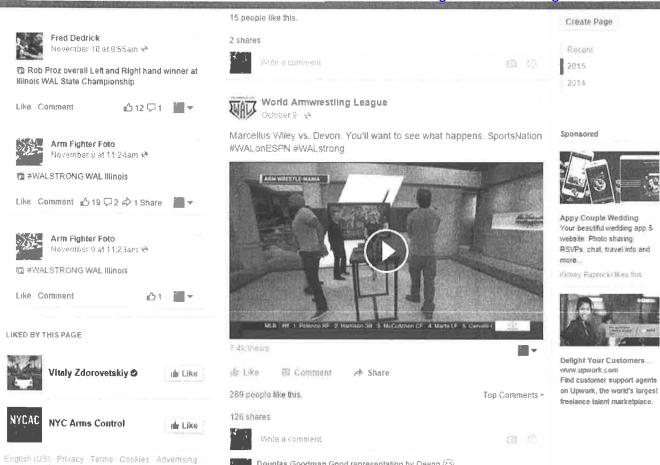


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Robert Redway Wiley talking out his ass as usual

Like Reply October 10 at 12 15pm

Like Reply October 9 at 2:08pm